

REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application. Claims 1-8, 10-15, and 27-37 are pending in the application.

Claim Objections

The Office objected to minor informalities with regard to claims 18 and 25. The above mentioned claims have been canceled without prejudice. Thus, the objections directed towards these claims are rendered moot.

Claim Rejections under 35 U.S.C §112, second paragraph

Claims 16, 25, and 26 are rejected under 35 U.S.C §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The above mentioned claims have been canceled without prejudice. Thus, the rejections directed towards these claims are rendered moot.

Double Patenting

The Office contends that claims 1-26 of the instant application were contained in certain claims of Application No. 10/632,250, the assignee of which is also the assignee of record in the instant application. Hence, the Office has rejected these claims under provisional obviousness-type double patenting because the conflicting claims have not been in fact patented. In view of the amendments and new claims presented in the instant case and provisional nature of the rejection, Applicant respectfully requests this rejection be held in abeyance until all the other substantive issues in this case have been resolved.

Claim Rejections under 35 U.S.C §101

Claim 1-25 are rejected under 35 U.S.C §101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is amended to clarify that statutory subject matter being sought. Applicant respectfully requests that the § 101 rejections with respect to claim 1 and its dependent claims 2-8, 10-15 be removed in view of the amendment.

Claim 16-26 are canceled without prejudice. Thus, rejections directed towards these claims are rendered moot.

Claim Rejections under 35 U.S.C. § 102

Claims 1-8, 10-15 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent Pub. No. 2003/0182574 to Whitten et al. (hereinafter, “Whitten”). Applicant respectfully traverses the rejection.

Claim 1 as amended to incorporate the elements of original claim 9, thereby essentially rendering claim 1 the same as original claim 9 (now canceled). Thus claim 1 recites an apparatus comprising:

one or more processors;

memory;

a media including game content; and

a data protection portion including a file system alteration checking portion, stored in the memory and executable on one or processors, that protects the apparatus from modification of the game content by determining whether the game content has been modified, wherein the data protection portion includes a

file signature checking portion for *checking whether the file signature is as expected for the media that has not been modified*,

and if the game content has been modified, then the use of the game content within the apparatus fails.

Whitten describes the usage of a private key to encrypt a header digest that includes digest of each section of software and information specifying a region, a rating, and media type of the software. A hashing algorithm is applied to produce the digests. On the game console, a public key is used to decrypt the header digest for comparison to a hash of the header. A digest of each section of digital data is computed and compared to the corresponding digest in the header to authenticate the data. (*Whitten*, Abstract).

With regard to original claim 9, the Office states Whitten discloses ‘the data protection portion includes a file signature checking portion for checking whether the file signature is as expected for media that has not been modified’ in ‘decision step 446’ in paragraph 60 on page 6 and ‘decision step 462’ in paragraph 64 on page 7. Applicant respectfully disagrees with the Office.

Whitten describes use of *data section and header digests* to determine the validity of the game software, but does not disclose ‘the data protection portion includes a file signature checking portion for *checking whether the file signature is as expected for media that has not been modified*’ as Whitten does not describe checking validity of game software based on comparing actual and expected file signature either in ‘decision step 446’ or ‘decision step 462’.

Therefore, Whitten does not disclose the above elements. Since Whitten does not disclose the above elements, it cannot be said to anticipate the above

claim. Therefore, Applicant respectfully requests that the §102(e) rejections be withdrawn.

Dependent claim 2-8 and 10-15 depend from claim 1 and are allowable by virtue of the dependency. Moreover, these claims recites features that, when taken together with those of claim 1, define methods not disclosed by Whitten.

Claim 16-26 are canceled without prejudice. Thus, the §102(e) rejections directed towards these claims are rendered moot.

Conclusion

Claims 1-8, 10-15, and 27-37 are in condition of allowance. Applicant respectfully requests reconsideration and prompt allowance of the subject application. If any issue remains unresolved that would prevent allowance of this case, the Examiner is requested to contact the undersigned attorney to resolve the issue.

Respectfully Submitted,

Date: Mar 2, 2007

By: _____



Lewis C. Lee
Lee & Hayes, pllc
Reg. No. 34,656
324-9256 ext. 211